IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7023 OF 1999

N.B. Mulani ....Petitioner
V/s.
Inspector General S W S Central Industrial Security Force and another ....Respondents

Ms.N.D. Buch for the Petitioner.

Mr.Ravi Shetty with Mr.D.A. Dubey for the Respondents.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.
DATED : 25TH APRIL, 2007.

JUDGMENT : (Per R.M.Savant, J.)

1. By this Petition filed under Article 226 of the Constitution of India, the Petitioner who was working as a constable in the Central Industrial Security Force is challenging the order dated 13.9.1995 dismissing him from service.

2. The factual matrix involved in the Petition is set out thus :-

. The Petitioner was appointed as a constable on 9.11.1981 in the Central Industrial Security Force. The Petitioner was detailed for duty to guard the properties of Administrative Building of MGCC at

Nagothane. The said property was guarded by the Central Security Force which is a paramilitary force constituted under the provisions of the Central Industrial Security Force Act, 1968. The Petitioner was detailed for duty on 20.1.1991 in the CIFS unit at MGCC, Nagothane and was deployed on patrolling beat in "C" shift between 21.00 hours to 5.00 hours. The Petitioner accordingly reported at gate No.5 of the premises of the said Company. On the said day and during the duty hours of the Petitioner, it was reported that four typewriters of the Company were stolen and one Car bearing No.MMG 6068 carrying four typewriters of the Company was allowed to exit without proper and thorough search. The Petitioner was served with a memorandum dated 9/12th February, 1991 issued by the Group Commandant, GP Headquarters, New Bombay alleging against the Petitioner the misconduct, negligence, dereliction of duty and an act of grave indiscipline resulting in theft of the four typewriters of the Company. The charge alleged against the Petitioner is reproduced hereunder :

> "Article-I- Gross misconduct, negligence, dereliction of duty and an act of grave indiscipline in that No.8105196 Constable N.B.Mulani of CISF Unit,

MGCC Nagothane while deployed on patrolling beat No.3 in 'C' shift on 20.1.91 from 2100 hrs to 0500 hrs on 21.1.91 withdrew himself from his duty unauthorisedly from 2200 hrs to 2245 hrs and went to gate No.5 engaged himself in checking of outgoing light vehicles without any orders from his superior officers where a car No.6068 carrying four typewriters of the undertaking was allowed exist without proper and thorough search of the said car which resulted into a theft of said four typewriters costing Rs.26,000/- (Appx) as reported by the Management on 21.1.91."

3. Prior to the issuance of the said memorandum, an F.I.R. was registered with Nagothane Police Station by the Manager of the Company and the same came to be registered as C.R. No.1/1991 on 21.1.1991. The offence registered was under Section 380 read with 34 of the I.P.C. Four employees including the Petitioner were arrested for the said crime. The said four employees were thereafter released on bail by the Judicial Magistrate First Class, Roha, District Raigard. The said case was registered as Criminal Case No.12 of 1991, which was tried by the learned Judicial Magistrate First Class, Doha, who by his

judgment and order dated 10.10.1994 acquitted the Petitioner.

4. Pursuant to the memorandum dated 9/12th February, 1991, the Group Commandant, GPCC, New Bombay, informed the Petitioner that a departmental enquiry would be held against the Petitioner. Along with the said letter dated 9/12th February, 1991, memorandum of charges were issued to the Petitioner. It appears that on 19.2.1991, the said memorandum of charges were withdrawn by the first Respondent. Thereafter on 19/22.2.1991, another office memorandum was issued to the Petitioner which contained same charges as the charges mentioned in the earlier memorandum dated 9/12th February, 1991. By the said memorandum dated 19/22.2.1991, the Petitioner was called upon to submit his explanation within the time stipulated in the said memorandum. The said memorandum inter-alia also stated that due to the mistake earlier memorandum dated 9/12th February, 1991 was withdrawn and a fresh charge-sheet has been served to the Petitioner on 19/22.2.1991. It appears that the departmental proceedings conducted pursuant to the said charge memorandum came to be dropped as the said proceedings were conducted ex-parte since the Petitioner did not participate in them. The D.I.G.

(Western Zone) of the Respondents therefore directed denovo proceedings, therefore a fresh charge sheet came to be issued to the Petitioner on 25.1.1993, pursuant to which enquiry was conducted, and punishment imposed upon the Petitioner.

5. In terms of the said memorandum and the charge-sheet dated 25.1.1993, the departmental enquiry was instituted. The Petitioner replied to the said memorandum and inter-alia contended that since the Petitioner is being criminally prosecuted in respect of the same allegations of theft, the departmental enquiry should not be proceeded with. The said contention of the Petitioner was not accepted by the Respondents and the departmental enquiry was proceeded with. The Petitioner was given the opportunity to defend himself. The departmental enquiry was concluded by following the procedure and by an order dated 13.9.1995, the Petitioner came to dismissed from service as it was held that in the departmental enquiry the charges were proved against the Petitioner.

6. Aggrieved by the said order dated 13.9.1995, the Petitioner preferred a departmental Appeal on 15.2.1996, which Appeal lay before the Inspector

General CISF Headquarters, Mumbai. The Appellate Authority by the order passed some time in June, 1996, dismissed the Petitioner's Appeal. It is the said order of dismissal dated 13.9.1995, passed by the disciplinary authority, which is the subject matter of the above Petition.

7. On behalf of the Respondents, an affidavit has been filed by Mr.S.P. Yadav, working as Commandant at the relevant time. The said affidavit inter-alia states that the Petitioner's services were not unblemished as sought to be contended by the Petitioner and that he was punished on earlier three occasions. The said affidavit goes on to state that on 21.1.1991 while he was deployed on the patrolling duty in beat No.3 from 21.00 hours to 5.00 hours. He reported at gate No.5 at about 22.00 hours for assisting the persons deployed on the said gate for checking incoming and outgoing vehicles and that he himself engaged in checking outgoing vehicles from 22.00 hours to 22.45 hours. On the said day, he allowed Car No.MMG 6068 to pass through gate without proper checking as a result of which four typewriters were stolen from P.P. Building which were hidden in the Car as reported by the Manager. It is further stated that the Petitioner failed to discharge his

duties and was unable to protect the property of the Company. In so far as the continuance of the departmental enquiry pending criminal trial is concerned, the affidavit states that the same could be proceeded with as the charges of misconduct alleged against the Petitioner was different; and that there was no bar in law to proceed with the departmental enquiry. The affidavit concludes by stating that the Petitioner was a member of the paramilitary force which was deployed to guard the property of the Company and the Petitioner by his conduct had belied the trust reposed in such a paramilitary personnel.

8. We have heard the learned counsel for the Petitioner Ms.N.D.Buch and Mr.Ravi Shetty for the Respondents. On behalf of the Petitioner the principle contention advanced is that since the charges in the criminal case as well as the departmental enquiry were identical, the Petitioner on his acquittal, should not have been proceeded with and that he ought to have been reinstated in view of his acquittal in the criminal case. It is further submitted by the learned counsel for the Petitioner that the evidence against the Petitioner is sketchy and is not sufficient to bring home the charge alleged against him. The learned counsel for the Petitioner

took us through the evidence which was recorded in Hindi and tried to demonstrate the inconsistencies in the depositions of various witnesses before the enquiry officer. Based on this alleged inconsistencies, it was submitted by the learned counsel for the Petitioner that the Petitioner was falsely implicated and the said charge therefore, could not be said to be proved against the Petitioner.

9. On behalf of the Respondents, it has been contended that there was no bar to proceed with the departmental enquiry even if the criminal trial is pending. It was submitted by Mr.Shetty, the learned counsel for the Respondents that the standard of proof required for bringing home the charge in a criminal trial is quite different than the standard of proof required in a departmental enquiry and therefore, there was no impediment in proceeding with the Petitioner departmentally though the criminal trial was pending. It was further submitted by the learned counsel for the Respondents that the acquittal of the Petitioner in the criminal case can have no bearing on the findings in the departmental enquiry as the standards of proof are different. The learned counsel submitted that the Petitioner was charged for negligence, dereliction of duty and grave

indiscipline, the said charge in the departmental proceedings was therefore different from the charge of theft, which was the charge in the criminal trial. The learned counsel for the Respondents relied upon the depositions which he had got translated into English for our convenience and pointed out that the disciplinary authority as well as the appellate authority were right in imposing the punishment of dismissal upon the Petitioner.

10. We have given our anxious consideration to the rival contentions of the respective parties. In the instant case, we have to bear in mind that the Petitioner is a member of paramilitary force like CISF. Therefore highest standards of honesty and integrity are expected from the members of such a paramilitary force especially when they are in a position of trust in guarding the properties of the Company like MGCC. The Petitioner has been charged for a serious misconduct of negligence, dereliction of duty and an act of grave indiscipline, resulting in the theft of the four typewriters of the Company which were stolen on account of the Petitioner not checking the Car No.MMG 6068 properly, when it was passing through the gate at which the Petitioner had deployed himself. The learned counsel for the Respondents drew

our attention to the evidence of D.K. Nayak, who was deployed with the Petitioner for night duty in beat No.3. D.K. Nayak has specifically stated in his cross-examination that it was the Petitioner who was checking the cars at the out gate. The other witness Havaldar Shelke also has deposed that it was the Petitioner, who was checking the cars at the out gate. There is also evidence of one more witness M.D. Nayak, who has also deposed that the Petitioner was deployed at the out gate and that he was checking the cars. Minor inconsistencies in evidence here and there would not weaken the evidence which is already there on record against the Petitioner.

11. This Court in its writ jurisdiction under Article 226 of the Constitution of India does not sit as a Court of Appeal over the departmental proceedings. In the matter of interference with the order of punishment, the scope of judicial review is very limited and interference is warranted only if the findings in the departmental enquiry are perverse or the punishment is shockingly disproportionate. In our view, such is not the instant case. It is not a case where there is absolutely no evidence against the Petitioner. The conclusions drawn therefore cannot be said to be perverse.

12. As regards the scope of judicial review in such matters, a useful reference could be made to the judgment of the Apex Court in the matter of *State of Andhra Pradesh & Ors. v. S. Sree Rama Rao, AIR 1963, Supreme Court, 1723.* Paragraph 7 of the said judgment is reproduced :

> "(7) There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of

> the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

13. The said principle is reiterated by the Apex Court in the judgment reported in AIR 2000 Supreme Court, 27 in the matter of *High Court of Judicature at Bombay v. Shashikant S. Patil & Anr.* Paragraph 16 of the said judgment is relevant and is reproduced hereunder :

> "16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative / disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."

14. In our view therefore, the findings in the departmental enquiry and the punishment imposed upon the Petitioner by the disciplinary authority based on

the said findings, do not call for any interference by this Court in its extra-ordinary writ jurisdiction under Article 226 of the Constitution of India. We have also perused the order passed by the Appellate Authority and therefore, do not find any ground to interfere with the same. In that view of the matter, the Petition would have to be dismissed and the Rule discharged, with no order as to costs.

(R.M. SAVANT, J.) (F.I. REBELLO, J.)